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10/573,414

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EXAMINER

DEXTER, CLARK F

ART UNIT

PAPER NUMBER

3724

MAIL DATE

DELIVERY MODE

12/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/573,414	Applicant(s) LAGO-ARENAS, MARTA	
	Examiner Clark F. Dexter	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-27 is/are pending in the application.
- 4a) Of the above claim(s) 9,11,13,14,16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8,12,15 and 18-26 is/are rejected.
- 7) ☒ Claim(s) 10 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 September 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed on September 2, 2008 has been entered.

Election/Restrictions

2. Newly amended claims 9, 11, 13, 14, 16 and 17 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Each claim is directed to a subcombination of the disclosed invention that is distinct (i.e., has two-way distinctness) with respect to the originally claimed/examined invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 9, 11, 13, 14, 16 and 17 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Drawings

3. The drawings were received on September 2, 2008. These drawings are acceptable.

Specification

4. The disclosure is objected to because of the following informalities:

In the replacement paragraph for page 10, line 22 through page 11, line 5 found on page 3 of the amendment:

line 4, "11, 30" remains inaccurate and should read --11, 31--.

Appropriate correction is required.

Claim Objections

5. Claims 1-5, 7, 8, 10, 12, 15, 18-22, 26 and 27 are objected to because of the following informalities:

In claim 1, line 5, "first" is misspelled.

In claim 20, line 3, a semi-colon --;-- is missing after "blade end".

In claim 21, line 1, "having" is not sufficiently clear as to what it refers.

Appropriate correction is required.

Claim Rejections - 35 USC § 112, 2nd paragraph

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 20-22 and 24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 20, line 3, the recitation "a blade end" is vague and indefinite as to whether it refers to that set forth in line 2 or to another such blade end, and further is vague as to which end of the blade it refers; in line 4, the recitation "a handle end" is

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vague and indefinite as to whether it refers to that set forth in line 2 or to another such handle end, and further is vague as to which end of the handle it refers; in lines 5-6, the recitation "extending from the handle of the knife towards the blade end of the blade" is vague and indefinite as to what is being set forth.

In claim 22, line 2, "the blade end" is vague as to what it refers.

In claim 24, line 4, the recitation "shaped to be located" is vague and indefinite as to how the blade is shaped, particularly to perform the recited function (e.g., it appears that the location of the blade on the knife, not the shape of the blade, would provide for the function).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-5, 7, 8, 12, 15, 18-24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeShutter, pn 5,904,250 in view of Formo et al., pn 4,524,512.

Regarding claims 20-22, DeShutter discloses a knife with almost every structural limitation of the claimed invention including a single-piece cutlery knife having a blade end and a handle end, the knife comprising:

a blade (e.g., 10, 28) having a blade end;

a hollow, substantially cylindrical handle (e.g., 8, which is clearly “substantially” cylindrical particularly in view of applicant’s definition; see specification of present application, page 5, lines 8-10) having a handle end and an inner surface, the handle extending from the handle end of the knife towards the blade end of the blade and a rib (e.g., 32) forming a continuation of the blade, the rib being joined to the inner surface of the hollow handle and extending from the blade of the knife centrally along the inner surface of the hollow handle (e.g., rib 32 extends in the same direction and thus “along” the inner surface, and extends “centrally” when viewed in the appropriate orientation of the knife);

[claim 21] having a slit (e.g., the opening formed between the sidewalls as best viewed in Fig. 7) running along the a length of the hollow, substantially cylindrical handle in parallel to a central longitudinal axis;

[claim 22] wherein the knife handle tapers to the blade end (e.g., as best viewed in Fig. 3) to expose a sharp edge of the blade.

DeShutter lacks an explicit disclosure of the material of the knife, specifically that it is made of resilient plastics material. However, the Examiner takes Official notice that it is old and well known in the art to make cutlery including knives from resilient plastics material and that such provides well known benefits including reduced cost and weight advantages. Numerous ones of the prior art of record including Formo et al. disclose cutlery made of resilient plastics material. Therefore, it would have been obvious to one having ordinary skill in the art to make the cutlery of DeShutter from resilient plastics material to gain the well known benefits including those described above.

Regarding claim 1 and the claims dependent therefrom, DeShutter discloses an assembly with almost every structural limitation of the claimed invention including:

at least a first and a second item of cutlery, one of said items of cutlery being a knife (e.g., 4) having a blade (e.g., 10, 28), wherein each item of cutlery has a cylindrical handle (e.g., 8, which is cylindrical particularly in view of applicant's definition; see specification of present application, page 5, lines 8-10) and wherein the handles are shaped such that they can be nested with each other and wherein, when in such a nested condition, the handle of the first outermost item extends more than half way around the handle of the second item (e.g., as viewed in Fig. 7, more than half of each inner/lower handle is within the outer/upper handle) thereby grasping the handle of the second item, whereby the items are held together in the nested condition (e.g., by 42);

[claim 2] which includes a third item of cutlery and wherein, when in the nested condition, the handle of the second item extends more than half way around the handle of the third item (e.g., as viewed in Figs. 7 and 9, more than half of each inner/lower handle is within the outer/upper handle) thereby grasping the handle of the third item, whereby the second and third items are held together in the nested condition;

[claim 3] wherein the handles of at least two of the items of cutlery are hollow;

[claim 4] wherein at least one of the items of cutlery has a slit (e.g., the opening formed between the sidewalls as best viewed in Fig. 7) running along the length of the handle of said at least one item;

[claim 26] wherein the knife has a rib (e.g., 32) forming an extension of the blade and being joined to, and extending along, an inside of a hollow handle of the knife;

[claim 5] wherein the knife has a rib (e.g., 32) forming an extension of the blade that extends along an inside of a hollow handle of the knife;

[claim 7] wherein the handle of the knife tapers towards an end of the blade of the knife to expose a sharp edge of the blade;

[claim 8] wherein part of the handle of the knife extends over at least part of the blade of the knife.

[claim 18] wherein the handle of each item of cutlery nests or is nested by the handle of another item of cutlery of the set;

[claim 19] wherein the handles of the items are coaxial when nested (e.g., due to the irregular shape of the handles, an axis is present that can be shared by all).

DeShutter lacks:

(a) [claim 1] the cutlery being made of resilient plastics material;

(b) [claim 12] wherein surfaces of adjacent handles engage when nested, a resilience of walls of the handles keeping the cutlery set assembly together.

(c) [claim 15] wherein the items of the assembly include a knife, fork and spoon;

Regarding (a), the Examiner takes Official notice that it is old and well known in the art to make cutlery including knives from resilient plastics material and that such provides well known benefits including reduced cost and weight advantages. Numerous ones of the prior art of record including Formo et al. disclose cutlery made of resilient

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plastics material. Therefore, it would have been obvious to one having ordinary skill in the art to make the cutlery of DeShutter from resilient plastics material to gain the well known benefits including those described above.

Regarding (b), the Examiner takes Official notice that such self-sustaining structure is old and well known in various analogous arts and provides the well known benefits including efficiency of manufacture and usage by eliminating additional components. Therefore, it would have been obvious to one having ordinary skill in the art to provide such a wall configuration to gain the well known benefits including that described above.

Regarding (c), Formo teaches that it is known in the art to provide stacks that include a knife, fork and spoon to provide for a single place setting or grouping for a user. Therefore, it would have been obvious to one having ordinary skill in the art to provide all of the different types of cutlery in a stack or grouping to gain the known benefits including that described above.

Regarding claim 23 and the claims dependent therefrom, DeShutter discloses an assembly with almost every structural limitation of the claimed invention including:

a first, a second and a third item of cutlery, wherein each item of cutlery has a cylindrical handle and wherein the handles are shaped such that they can be nested with each other and wherein, when in the nested condition, the handle of the first, outermost, item extends more than half way around the handle of the second, next inner, item thereby grasping the handle of the second item, whereby the first and second items are held together in the nested condition (e.g., by 42) and the handle of

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the second item extends more than half way around the handle of the third, innermost, item thereby grasping the handle of the third item, whereby the second and third items are held together in the nested condition (e.g., by 42);

[claim 24] wherein the first item is a knife having a blade and the second and third items each have a slit running along the length of their handles and wherein the blade of the knife is shaped to be located in the slits of the second and third items when the items of the cutlery are in the nested condition (i.e., the blade of DeShutter is generally the same shape as any knife blade including that of the present invention and thus appears to meet such a limitation regarding blade shape).

DeShutter lacks:

[claim 23] the cutlery being made of resilient plastics material. However, the Examiner takes Official notice that it is old and well known in the art to make cutlery including knives from resilient plastics material and that such provides well known benefits including reduced cost and weight advantages. Numerous ones of the prior art of record including Formo et al. disclose cutlery made of resilient plastics material. Therefore, it would have been obvious to one having ordinary skill in the art to make the cutlery of DeShutter from resilient plastics material to gain the well known benefits including those described above.

Allowable Subject Matter

10. Claims 10 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claim 25 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark F. Dexter whose telephone number is (571)272-4505. The examiner can normally be reached on Mondays, Tuesdays, Thursdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on (571)272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/Clark F. Dexter/
Primary Examiner, Art Unit 3724**

cf
December 8, 2008